

89-10634

Supreme Court, U.S.

FILED

DEC 29 1989

JOSEPH F. SPANIOLO, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

FRANK J. CAMOSCIO,

PETITIONER,

VS.

JUSTICE FRANCIS P. MURPHY, ET AL.,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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30942



QUESTIONS PRESENTED

A. DOES FEDERAL COURT HAVE JURISDICTION TO HEAR THE SUBJECT MATTER.

B. WAS THE PETITIONER DENIED EQUAL ACCESS TO THE COURT.



TABLE OF CONTENTS

Page

QUESTIONS PRESENTED

A. DOES FEDERAL COURT HAVE
JURISDICTION TO HEAR THE SUBJECT
MATTER. i

B. WAS THE PETITIONER
DENIED EQUAL ACCESS TO THE
COURT. i

Table of Authorities Cited. vi,vii,
viii

I. OPINION BELOW 1,2

II. JURISDICTION 2



TABLE OF CONTENTS

Page

III. CONSTITUTIONAL PROVISION

INVOLVED

A. CONSTITUTIONAL

PROVISION. 2, 3

IV. STATEMENT OF FACTS 3, 4,

5

V. REASONS FOR GRANTING

THE WRIT

A. THIS CASE PROVIDES

THIS COURT WITH AN OP-

PORTUNITY TO DECIDE

WHETHER THE FEDERAL

COURT HAS THE JURIS-

DICTION TO HEAR CIVIL

RIGHTS VIOLATIONS. 6, 7,



TABLE OF CONTENTS

Page

8,9

B. THIS CASE PROVIDES
THIS COURT WITH AN OP-
PORTUNITY TO DECIDE WHEN
THE FEDERAL COURT SHOULD
HEAR CIVIL RIGHTS VIO-
LATIONS INVOLVING EQUAL
ACCESS TO THE COURTS. . 9,10,
11,12

VI. CONCLUSION. . . . 12

VII. APPENDIX:

APPENDIX "A" - OPINIONS OF
COURT OF
APPEALS. . A1,A2



TABLE OF CONTENTS

	<u>Page</u>
APPENDIX "B" - OPINIONS OF COURT OF APPEALS.	. B1, B2, B3
APPENDIX "C" - OPINIONS OF DISTRICT COURT.	. C1, C2



TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page</u>
<u>Gregory v. Thompson,</u> 500 F. 2d 59 (1974). . . .	7
<u>Hogge v. Hedrick,</u> D.C. Va. 1975, 391 F. Supp. 91	8,9
<u>Hurley v. Van Lare,</u> D.C.N.Y. 1973, 365 F. Supp. 186. . . .	9
<u>Irwin v. Calhoun,</u> D.C. Mass. 1981, 522 F. Supp. 576. . . .	7,8
<u>Johns v. Allen,</u> D.C. Del. 1964, 231 F. Supp. 852. . . .	9



TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page</u>
<u>Kazubowski v. Kazubowski,</u> 45 Ill. 2d 405, 259 N.E. 2d 282, 290.	7
<u>Lopez v. Vanderwater,</u> 620 F. 2d 1229 (1980).	7
<u>Pennoyer v. Neff,</u> 95 U.S. 733, 24 L. Ed 565.	7
<u>Shawgo v. Spradlin,</u> 701 F. 2d 470, certiorari denied.	11
<u>Whisehunt v. Spradlin,</u> 104 S. Ct. 404	11, 12



TABLE OF AUTHORITIES

RULES AND STATUTES

Page

62 Stat. 928, 28 U.S.C. § 1254(1). 2

Title 42 § 1983. . . . 6

Title 42 § 1985. . . . 6

Title 42 § 1986. . . . 6

Title 42 § 1988. . . . 6

OTHER SOURCES

Fourteenth Amendment, Section 1
of the United States Constitution. 2,3



PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Petitioner, Frank J. Camoscio,
respectfully prays that a writ of
certiorari issue to review the judgment
and opinion of the United States Court
of Appeals for the First Circuit enter-
ed in the above-entitled cause on Sep-
tember 14, 1989 and October 11, 1989.

I.

OPINION BELOW

The memorandum opinion of the
Court of Appeals is attached as Appen-
dix A. The Court of Appeals decision on
the Petition for In Banc is attached as



Appendix B. The lower court's decision is attached as Appendix C.

II.

JURISDICTION

The opinion of the Court of Appeals for the First Circuit was filed on September 14, 1989 and October 11, 1989. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C. § 1254(1).

III.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment, Section 1 of the United States Constitution provides:



All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IV.

STATEMENT OF FACTS

The petitioner, Frank J. Camoscio,



filed suit against respondents Justice Francis P. Murphy and Register John J. Daley in Boston Federal District Court on April 4, 1988 for civil rights violations. The petitioner's complaint outlined the civil rights violations by the respondents.

The petitioner stated in his original complaint that Justice John P. Murphy denied him the right to appear before him and speak on a matter concerning property in which he had a financial interest. The petitioner filed the motion appropriately under Massachusetts Rules of Civil Procedures but Justice Murphy refused the petitioner the right to be heard. This action denied the petitioner equal access to the courts.

The petitioner then found his motions disposed of in a waste paper bas-

ket in the clerk's office. The petitioner retrieved these motions because they bore the stamp of the court, thus proving that he had filed these motions. Register Daley, upon seeing this, ordered four court officers to illegally restrain and search the petitioner. During the search they recovered two out of the three filed documents, but, to date, none of these documents are recorded in the appropriate Massachusetts court records.

The petitioner sought nothing more than the restoration of his constitutional rights, the court record being corrected, and an apology from the respondents.

To date, the respondents have never denied any of these charges, nor have they stated that any of these facts are not true.



V.

REASONS FOR GRANTING THE WRIT

A. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO DECIDE WHETHER THE FEDERAL COURT HAS THE JURISDICTION TO HEAR CIVIL RIGHTS VIOLATIONS.

If the First Circuit Court decision stands it would theoretically abolish a citizen's rights to regain his constitutional rights through the federal court system. The petitioner filed his complaint under Title 42, § 1983, § 1985, § 1986 and § 1988. The petitioner fulfilled the requirements of these federal laws by clearly demonstrating that his constitutional rights were being violated under the color of state law. The petitioner also demonstrated that there was no recourse of appeal under



state law since the three motions he had filed did not appear in any of the state court records.

The petitioner argues that the federal court does have jurisdiction to hear civil rights violations. The petitioner cites the following cases as legal grounds giving the court jurisdiction to hear this matter: Lopez v. Vanderwater, 620 F. 2d 1229 (1980), Gregory v. Thompson, 500 F. 2d 59 (1974), Pennoyer v. Neff, 95 U.S. 733, 24 L. Ed 565 and Kazubowski v. Kazubowski, 45 Ill. 2d 405, 259 N.E. 2d 282, 290.

The petitioner quotes the following cases clearly proving that the court has jurisdiction: Irwin v. Calhoun, D.C. Mass. 1981, 522 F. Supp. 576, "Section 1983 of Title 42 governing civil action for deprivation of rights and



section 1343 of this title providing that district court shall have original jurisdiction of any civil action commenced by any person for enforcement of civil rights do not 'by reference' restrict scope of this section stating that district court shall have original jurisdiction of all civil actions arising under Constitution, laws or Treaties of the United States, and exercise of pendant party jurisdiction is not thereby negated by implication;" Hogge v. Hedrick, D.C. Va. 1975, 391 F. Supp. 91, "This section giving right of action in tort to an individual whose federal rights are infringed by any person acting under color of state law confers jurisdiction on federal district courts to hear a civil rights action for both monetary and equitable relief against municipal officers in their official

capacities;" Hurley v. Van Lare, D.C.N.Y. 1973, 365 F. Supp. 186, reversed on other grounds 497 F. 2d 1208, on remand 380 F. Supp. 167, "Under this section, and laws, federal court has jurisdiction only if the complaint presents a substantial constitutional question," and Johns v. Allen, D.C. Del. 1964, 231 F. Supp. 852, "Jurisdiction was conferred upon federal district court where substantial issues involving violation of federal constitutional rights were involved in case."

B. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO DECIDE WHEN THE FEDERAL COURT SHOULD HEAR CIVIL RIGHTS VIOLATIONS INVOLVING EQUAL ACCESS TO THE COURTS.

The petitioner states that he was



denied equal access to the courts by the respondents. Respondent Justice Murphy denied the petitioner the right to appear before the court in which he was presiding concerning a matter in which the petitioner had a financial interest. The petitioner had filed the appropriate papers with the clerk's office allowing him to appear and present favorable arguments concerning a financial matter involving the petitioner before the Justice. Respondent Murphy refused the petitioner the right to speak and present favorable arguments even though it affected the petitioner financially.

The petitioner then discovered the papers that he filed with the court in the waste-paper basket. These papers bore the court markings. The petitioner retrieved all three motions from the waste-paper basket. The respondent Reg-



ister Daley upon seeing this had four court officers illegally searched the petitioner and they seized two out of the three filed motions. Register Daley never recorded any of these motions in the court record. The petitioner states that the respondents never denied these charges as stated in his complaint to the federal court. The petitioner states that he was denied access to the courts to file papers and present favorable arguments. The petitioner cites the following case: Shawgo v. Spradlin, 701 F. 2d 470, certiorari denied Whisehunt v. Spradlin, 104 S. Ct. 404, "Minimum federal constitutional requirement is only that party deprived of a property right have an opportunity for a hearing granted at a meaningful time and a meaningful manner, for a hearing appropriate to nature of the

case as well as a meaningful opportunity to be heard."

VI.

CONCLUSION

This case presents an important Constitutional issue of whether state public officials can deny the common citizen equal access to the courts involving financial matters concerning that citizen. If the Court does not act it would establish a dangerous precedent of allowing public officials to deny the common citizens equal access to the courts and no protection from illegal search and seizure.



Respectfully submitted,

Frank J. Camoscio

Frank J. Camoscio

Pro se

252 Hanover Street

Boston, Massachusetts 02113

DATED: December 28, 1989

Domenic Bruno

NOTARY PUBLIC

My Commission Expires May 29, 1992

Domenic Bruno

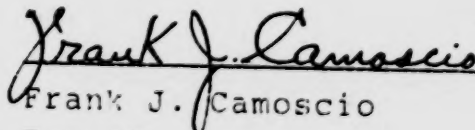
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CERTIFICATE OF SERVICE

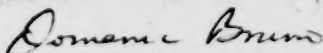
I hereby certify that three copies of the foregoing Petition For Writ of Certiorari were mailed to Countess C. Williams, Assistant Attorney General, One Ashburton Place, Boston, Massachusetts 02108, Attorney for Respondents Justice Francis P. Murphy and Register John J. Daley, on this 28th day of December 1989.

I hereby certify that all the statements contained in my Certificate of Service are true and are made under the pains and penalties of perjury.


Frank J. Camoscio
Pro SE

Domenic Bruno
NOTARY PUBLIC

My Comm. Expires 12/31/1992


12/28/89



APPENDIX



UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 89-1209

FRANK J. CAMOSCIO,
Plaintiff, Appellant,

v.

JUSTICE FRANCIS P. MURPHY, ET AL.,
Defendants, Appellees.

Before
Campbell, Chief Judge,
Bownes, Breyer, Torruella and Selya,
Circuit Judges.

ORDER OF COURT

Entered October 11, 1989

The petition for hearing en banc is
denied.



[NOT FOR PUBLICATION]

United States Court of Appeals
For the First Circuit

No. 89-1209

FRANK J. CAMOSCIO,
Plaintiff, Appellant,

v.

JUSTICE FRANCIS P. MURPHY, ET AL.,
Defendants, Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. William G. Young,
U.S. District Judge]

~~Before~~

Campbell, Chief Judge,
Torruella and Selya, Circuit Judges.



Frank J. Camoscio on brief pro se.
James M. Shannon, Attorney General,
and Countess C. Williams, Assistant At-
torney General, on brief for appellees.

September 14, 1989

Per Curiam. To the extent plain-
tiff's action attacked the lawfulness
of state court proceedings, it was
properly dismissed as lower federal
courts lack the authority to review
state court proceedings. Rooker v.
Fidelity Trust Co., 263 U.S. 413 (1923);
Fortune v. Mulherrin, 533 F. 2d 21 (1st
Cir.), cert. denied, 429 U.S. 864
(1976). To the extent plaintiff sought
to state a claim for denial of access
to courts or for illegal search and



seizure against the registrar, plaintiff expressly did not seek damages, and he failed to state any supportable basis for other requested relief.

Consequently, the action was properly dismissed.

Affirmed.



William G. Young

District Judge

Written Decision dated January 18, 1989
on Defendants' Motion to Dismiss.

January 18, 1989.

The motion to Dismiss is allowed because this court has no subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1), and alternatively because this complaint fails to state a claim upon which relief can be granted, Fed. R. Civ. P. 12(b)(6), upon all of the grounds advanced in the defendants' memorandum.

William G. Young, District Judge

William G. Young

District Judge

Written Decision dated February 10,
1989, on Plaintiffs Motion for Re-
consideration.

February 10, 1989,

Motion denied.

William G. Young

District Judge